

Pursuant to Ind.Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the case.

ATTORNEYS FOR APPELLANTS:

EDWARD J. LIPTAK
JEREMY M. DILTS
Carson Boxberger LLP
Bloomington, Indiana

ATTORNEYS FOR APPELLEE:

KATHY A. LEE
JODI L. SILCOX
Cline Farrell Christie Lee & Caress, P.C.
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT L. FORSTE, JR., M.D. and)
SOUTHERN INDIANA ORTHOPEDICS, INC.,)

Appellants,)

vs.)

SUSAN T. GREATHOUSE,)

Appellee.)

No. 03A05-0603-CV-130

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT

The Honorable Stephen R. Heimann, Judge

Cause No. 03C01-0408-CT-1156

April 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Robert L. Forste, Jr., M.D., and Southern Indiana Orthopedics, Inc., appeal from the trial court's order granting a new trial to Plaintiff-Appellee Susan T. Greathouse. Dr. Forste and Southern Indiana Orthopedics raise two issues for our review, which we consolidate and restate as whether the court abused its discretion in ordering a new trial after finding that the weight of the evidence did not support the jury's verdict.

We affirm.

FACTS AND PROCEDURAL HISTORY

After a three-day trial and adverse jury verdict on her medical malpractice claims, Greathouse timely filed a Motion to Correct Error with the trial court pursuant to Trial Rules 50 and 59(J)(7). After a hearing, the trial court granted Greathouse's motion, vacating the jury's verdict and ordering a new trial on all issues. In its order, the court summarized the facts and evidence as follows:

3. On May 16, 1998, Greathouse was involved in a motor vehicle collision during which she injured her right foot. Mrs. Greathouse was transported to the Columbus Regional Hospital Emergency Department. An x-ray was interpreted to show a non-displaced oblique fracture of the talus, which is a bone that is located in the center of the ankle joint.

4. Mrs. Greathouse was seen and evaluated by Dr. Forste in the Columbus Regional Hospital Emergency Department. Dr. Forste did not order a CT scan of Mrs. Greathouse's right foot. Instead, relying solely on her x-ray, he ordered a removable orthopedic boot be placed on her right leg and gave her crutches. Dr. Forste instructed Mrs. Greathouse to try to stay off her feet until she was seen again by him on May 18, [1998].

5. On May 18, 1998, Dr. Forste evaluated Mrs. Greathouse in his office at Southern Indiana Orthopedics, Inc. Dr. Forste noted that Mrs. Greathouse's right foot was markedly swollen, tender and bruised. Dr. Forste concluded that Mrs. Greathouse had a non-displaced, non-angulated fracture of the talus. He instructed Mrs. Greathouse to elevate the foot for

one week, use the orthotic, take pain medication, and return on May 26, 1998.

6. Mrs. Greathouse returned on May 26, 1998[,] as instructed. Dr. Forste evaluated Mrs. Greathouse in his office. Mrs. Greathouse reported that she was experiencing pain in the area of her right ankle. Her foot was still bruised and diffusely tender. Dr. Forste instructed her to continue to ambulate in her orthotic.

7. On June 8, 1998, Dr. Forste evaluated Mrs. Greathouse. Mrs. Greathouse continued to experience pain in the area of the fracture. Dr. Forste instructed her to continue to bear weight as tolerated on the affected side.

8. On June 29, 1998, Dr. Forste evaluated Mrs. Greathouse. Mrs. Greathouse continued to experience pain and swelling in the area of the fracture. According to Dr. Forste, x-ray confirmed "continued satisfactory position of the non-displaced fracture of the talus." Dr. Forste still did not order a CT scan of Mrs. Greathouse's right foot. Dr. Forste instructed Mrs. Greathouse to continue weight bearing, begin physical therapy, use support stockings, and to wear running or jogging shoes.

9. Mrs. Greathouse participated in the physical therapy that Dr. Forste ordered from June 29, 1998[,] through August 15, 1998, at which time the therapist determined that Mrs. Greathouse's therapy progress had plateaued and that Mrs. Greathouse continued to have foot stiffness.

10. On July 21, 1998, Dr. Forste evaluated Mrs. Greathouse. Mrs. Greathouse continued to experience pain in her foot. Dr. Forste instructed her to continue weight bearing and [an] active range of motion.

11. On August 4, 1998, Dr. Forste evaluated Mrs. Greathouse again. Mrs. Greathouse continued to complain of pain in her ankle. Dr. Forste told her to continue to walk in her regular shoes and to return in three [] weeks.

12. At the same time as her treatment by Dr. Forste, Mrs. Greathouse was receiving treatment from Daria Schooler, M.D., for her neck and shoulder injuries suffered during the automobile accident. Mrs. Greathouse discussed with Dr. Schooler's office the fact that her ankle was not improving as she had expected. On August 20, 1998, Dr. Schooler ordered a bone scan of Mrs. Greathouse's right ankle. The bone scan was interpreted to reveal an impaction of the talar dome at the site of the oblique fracture through the talus. No definite fracture line could be demonstrated, but the posterior tubercle was a separate fragment and displaced posteriorly.

The bone scan was also interpreted to show increased activity about the left ankle likely secondary to [the] altered gait from the right ankle pain.

13. On August 31, 1998, Mrs. Greathouse was evaluated by Dr. Schooler. Dr. Schooler concluded that Mrs. Greathouse's continued pain in her right ankle was caused by her unhealed foot fracture.

14. On September 1, 1998, Mrs. Greathouse requested that Dr. Forste refer her to an orthopedic surgeon at Methodist Hospital in Indianapolis, Indiana, for a second opinion. Dr. Forste refused to provide the referral.

15. On September 2, 1998, Mrs. Greathouse was evaluated by Bonnie Weigert, M.D.[,] for her continued pain. Dr. Weigert concluded that Mrs. Greathouse needed to have another orthopedic consultation. Dr. Weigert referred Mrs. Greathouse to D. Kevin Scheid, M.D.[,] in Indianapolis, Indiana.

16. On September 3, 1998, Mrs. Greathouse was evaluated by Dr. Scheid. Dr. Scheid recommended a CT scan. The CT scan showed a severely comminuted fracture of the talus. Minimal callus formation through the talar neck fracture had occurred. Comminution of the articular surface at the posterior facet of the subtalar joint was apparent. Multiple bone fragments were seen within the subtalar joint. Degenerative changes were present in the middle facet. Downward collapse of the posterior aspect of the subtalar joint was seen. Dr. Scheid concluded that Mrs. Greathouse had developed debilitating subtalar arthritis and non-union of the right talus.

17. On September 18, 1998, Dr. Scheid performed an open reduction and internal fixation of the talus. He also performed a fusion of the subtalar.

18. Mrs. Greathouse continued under Dr. Scheid's care. On February 1, 1999, Mrs. Greathouse was evaluated by Dr. Scheid. Dr. Scheid concluded that Mrs. Greathouse's subtalar joint was stiff. X-rays showed the talus to be healed and [a] solid fusion mass.

19. Mrs. Greathouse had significant pain in the area of her ankle the entire time that she was under the care of Dr. Forste. She had pain in the area of her ankle for several months after the corrective surgery by Dr. Scheid. She continues to have stiffness in the area of her ankle. She has limited motion because of the fusion and has suffered permanent injury.

20. Based on the foregoing, Mrs. Greathouse, by counsel, filed a Proposed Complaint for Damages with the Indiana Department of Insurance on May 12, 2000, as required by the Indiana Medical Malpractice Act., Indiana Code § 34-18-1-1 et seq.

21. Thereafter, a medical review panel was assembled. The Medical Review Panel was composed of three voting physicians—Karl M. Baird, M.D.; Jaime J. Cebedo, M.D.; and Gregory A. Peyer, M.D.—and the non-voting attorney chairperson—Caroline A. Gilchrist.

22. On August 15, 2003, Plaintiff tendered Plaintiff's Submission of Evidence to the Medical Review Panel. Defendants tendered their Submissions on November 21, 2003, which was followed by the Plaintiff's Reply Brief submitted on February 2, 2004.

23. The Medical Review Panel convened on May 13, 2004. After reviewing the evidence submitted to the panel, the Medical Review Panel rendered a unanimous opinion in which it found that the evidence supported the conclusion that Dr. Forste had not met the applicable standard of care and that his conduct was a factor of the resultant damages.

24. Mrs. Greathouse, by counsel, proceeded to file her Complaint for Damages in this Court on August 3, 2004. A jury trial commenced on July 19, 2005. Evidence was presented over the course of three days.

25. Mrs. Greathouse presented three expert witnesses, one of which was a member of the medical review panel. All three of these expert witnesses concluded that Dr. Forste had failed to comply with the standard of care and that the substandard treatment caused Mrs. Greathouse to suffer damages.

26. Dr. Peyer testified on behalf of all three expert panel members who issued a unanimous opinion that Dr. Forste's failure to meet the applicable standard of care in treating Mrs. Greathouse resulted in her sustaining damages. Dr. Peyer testified that the Panel felt that Dr. Forste's evaluation and treatment of Mrs. Greathouse's injury fell short of the applicable standard of care for an orthopedic surgeon in his circumstance. In particular, Dr. Peyer highlighted that Dr. Forste should have used a CT scan to properly evaluate the extent of Mrs. Greathouse's injury and that the standard of treatment would be to use a cast and to instruct the patient not to bear weight on the foot for three [] months to give the fracture time to heal. Dr. Peyer further testified that contrary to the applicable standard of care, Dr. Forste placed Mrs. Greathouse in a removable orthopedic device and instructed her she could weight bear as tolerated a mere ten []

days following her presentation to the Columbus Regional Hospital Emergency Department.

27. Dr. Peyer additionally testified that a better evaluation and treatment of the fracture would have increased Mrs. Greathouse's chance of a more favorable outcome in that her pain and stiffness would have been decreased. By way of example, Dr. Peyer testified that he would have expected Mrs. Greathouse's pain to be decreasing within ten [] days post-injury. Mrs. Greathouse testified, however, that her pain had actually increased/had not decreased by the time of her May 26, 1998[,] appointment with Dr. Forste. Moreover, Dr. Peyer opined that the substandard medical care rendered to Mrs. Greathouse by Dr. Forste increased Mrs. Greathouse's risk of arthritis and requirement for a fusion. Ultimately, Dr. Peyer explained that Dr. Forste's choice of treatment for Mrs. Greathouse's ankle increased the risk of her having an unfavorable outcome.

28. Lance Weaver, M.D., an expert retained by Mrs. Greathouse, testified that Dr. Forste deviated from the standard of care in his evaluation and treatment of Mrs. Greathouse's injury. Dr. Weaver cited several examples of how Dr. Forste deviated from the standard of care. First, Dr. Weaver testified that Dr. Forste allowed weight bearing too soon. Dr. Weaver explained that weight bearing should be avoided for six [] to eight [] weeks. Mrs. Greathouse, however, was allowed to bear weight on her injured foot just ten [] days following her injury. Next, Dr. Weaver criticized Dr. Forste for failing to perform a CT scan to evaluate the extent of damage to Mrs. Greathouse's ankle and foot and to properly direct her care. Dr. Weaver explained that once Dr. Forste diagnosed a talar neck fracture by x-ray, the standard of care required him to perform a CT scan. Finally, Dr. Weaver testified that Dr. Forste violated the standard of care by placing Mrs. Greathouse in a removable CAM walker. Dr. Weaver stated that placing Mrs. Greathouse in an orthopedic boot instead of a cast encouraged premature weight bearing and consequent displacement.

29. Dr. Weaver further testified that Dr. Forste's violation of the reasonable and accepted standards of medical care resulted in harm to Mrs. Greathouse. He explained that Dr. Forste's substandard medical treatment of Mrs. Greathouse's injury caused increased pain and stiffness, development of a nonunion, and exposed her to arthrodesis of other joints in the future. Furthermore, while admitting that the damage caused to Mrs. Greathouse's ankle during the motor vehicle accident was a factor in Mrs. Greathouse's arthritis and subsequent need for a fusion, Dr. Weaver was steadfast in his testimony that Dr. Forste's substandard care also contributed to Mrs. Greathouse's arthritis and the need for fusion. He also highlighted that[,] based on the various x-rays, there was slightly more

displacement over time, and he attributed this displacement to the early weight bearing that Dr. Forste permitted.

30. Dr. Scheid, a subsequent treating physician of Mrs. Greathouse, testified as to Mrs. Greathouse's post-injury status. Dr. Scheid testified that by the time he saw Mrs. Greathouse on September 3, 1998, she had developed debilitating arthritis, which he opined was at the very least accelerated by Dr. Forste permitting Mrs. Greathouse to walk on her fractured talus. At this same visit, which was nearly four [] months after she first injured her ankle, Mrs. Greathouse complained of persistent pain and swelling in her foot that was significant enough and not changing that it led him to believe further investigational study was required. Dr. Scheid explained that, at best, she exhibited a delayed union with healing much slower than would normally be anticipated. Dr. Scheid further explained that while Mrs. Greathouse had some callus formation, which is premature bone in the formative stages, it never really solidifies to form bone if there is too much motion. To avoid this motion, and big problems in the future therefrom, Dr. Scheid explained that immobilization for a minimum of six [] weeks in a cast without weight bearing would be the course to follow. Additionally, while Dr. Scheid testified that the development of Mrs. Greathouse's arthritis could be partially attributed to the initial injury sustained in the motor vehicle accident, he added that weight bearing on a talar neck fracture that is out of position can exacerbate arthritis. Stated otherwise, according to Dr. Scheid, the premature weight bearing following her injury accelerated the thinning of Mrs. Greathouse's cartilage thereby accelerating the development of her arthritis and need for a fusion.

31. Mrs. Greathouse also presented evidence that there was published literature of a study in which 39 patients had talar fractures treated with early surgical fixation and correction. Only 13, or one-third, of those patients developed arthritis and only 5 went on to need a fusion. Therefore, 87% of those patients went on to need a fusion such as Mrs. Greathouse needed. This was evidence that Dr. Forste's negligent care increased Mrs. Greathouse's chance of arthritis by two-thirds, or 66%, and increased her need for a fusion or her risk of harm by 87%.

32. Dr. Forste presented testimony from three expert witnesses. Two of these three witnesses testified that Dr. Forste failed to meet the standard of care and all three admitted that Dr. Forste's treatment did not help Mrs. Greathouse. Additionally, one of Dr. Forste's experts admitted that Dr. Forste caused Mrs. Greathouse to experience more pain, while another testified that Dr. Forste's deviation from the standard of care possibly accelerated the need for fusion.

33. Edward E. Bell, Jr., M.D., an expert retained by Dr. Forste, testified that Dr. Forste deviated from the standard of care. Dr. Bell cited multiple grounds on which Dr. Forste violated the standard of care. First, Dr. Bell testified that Dr. Forste should have ordered a CT scan for Mrs. Greathouse. Dr. Bell also stated that[,] after ordering the CT scan, Dr. Forste should have performed a closed reduction with internal fixation or an open reduction with internal fixation. Finally, Dr. Bell testified that Mrs. Greathouse should [have] been kept non-weight bearing for a number of weeks.

34. In addition to testifying that Dr. Forste deviated from the standard of care, Dr. Bell also testified that he thought that Mrs. Greathouse suffered more pain in the short term due to the substandard care provided by Dr. Forste. Dr. Bell also opined, however, that he felt that Dr. Forste did not cause long term harm to Mrs. Greathouse because she probably would have had some pain and arthritis and needed a fusion due to her initial injury regardless of Dr. Forste's substandard treatment. Nonetheless, Dr. Bell admitted that he did not have the experience to form a very good conclusion regarding whether Mrs. Greathouse's ultimate outcome was a product of Dr. Forste's substandard early treatment of her injury. Further, Dr. Bell testified that weight bearing before a fracture is healed, which was allowed by Dr. Forste, can result in displacement and opined that Mrs. Greathouse's fracture was displacing while under Dr. Forste's care. Dr. Bell also testified there was no evidence of healing of the fracture during the time that Mrs. Greathouse sought treatment from Dr. Forste. Moreover, Dr. Bell testified that walking on a fracture where the fracture enters a weight bearing joint that is not yet healed and out of position—as was the case with Mrs. Greathouse—accelerates damage in the underlying joint, causes fragments to shift, and ultimately causes damage to the cartilage in the subtalar joint. He also testified that at least one study has shown that the proper restoration of good alignment may limit the development of post-traumatic arthritis.

35. James Renne, M.D., an expert retained by Dr. Forste, also testified that Dr. Forste's medical treatment of Mrs. Greathouse's injured right ankle and foot did not meet accepted and reasonable standards of medical care. Dr. Renne reached this conclusion based on Dr. Forste's misreading of Mrs. Greathouse's x-ray as showing a nondisplaced fracture instead of a displaced fracture, his decision to forego a CT scan of Mrs. Greathouse's foot, and his allowing weight bearing ten [] days post-injury. Dr. Renne also opined that Dr. Forste should have promptly performed an open reduction with internal fixation.

36. Dr. Renne additionally testified that Dr. Forste's treatment from May through August 1998 did not help Mrs. Greathouse's condition.

Further, Dr. Renne testified [that] the residual irregularity of the joint surface can produce arthritic changes with the resumption of motion and weight bearing. While Dr. Renne testified that he was not able to quantify how much the need for a fusion was accelerated by weight bearing, he did testify that it possibly accelerated her need for a fusion. Dr. Renne also testified that his ability to determine whether Mrs. Greathouse's fracture could have been resolved with fixation was impeded by Dr. Forste's failure to order a CT scan for Mrs. Greathouse.

37. Contrary to the opinion of six other medical professionals, John C. Pritchard, M.D., an expert retained by Dr. Forste, testified that Dr. Forste did not deviate from the standard of care in his treatment of Mrs. Greathouse. He did admit, however, that Dr. Forste's treatment did not help Mrs. Greathouse's injury and that Mrs. Greathouse had documented pain in her foot while she was under Dr. Forste's care.

38. Following the conclusion of the presentation of evidence and closing arguments on July 21, 2005, the jury retired to deliberate. The jury returned a verdict against Mrs. Greathouse and in favor of Dr. Forste and Southern Indiana Orthopedics, Inc. The Court entered judgment on the jury's verdict on that same day.

39. Mrs. Greathouse, by counsel, timely filed a timely Motion to Correct Error pursuant to Indiana Trial Rules 50 and 59(J).

Appellant's App. at 103-112 (emphasis original).

The court then analyzed relevant case law and concluded:

7. This trial court judge, who has been on the bench for over fourteen [] years[,] recognizes the appropriate deference to be given to a jury's verdict. It is for that reason that this trial court judge has not previously granted a new trial against a jury's verdict.

8. Assuming its role as the "seventh juror" in this case, the Court concludes that the great weight of the evidence from the six orthopedic surgeons was that Dr. Forste violated reasonable and accepted standards of medical care when treating Mrs. Greathouse between May 16, 1998[,] and September 1, 1998.

5. [sic] Further, the Court concludes that the weight of the evidence indicates that Dr. Forste's deviation from reasonable and accepted standards of medical care proximately caused Mrs. Greathouse's damages as the injuries suffered by Mrs. Greathouse were reasonably foreseeable as a consequence of the negligent acts and omissions of Dr. Forste. The weight of the evidence indicated that Mrs. Greathouse suffered, at the very

least[,] increased temporary pain and suffering, if not also[] increased risk of arthritis, increased need for the fusion, and permanent injuries attributable to the negligence of Dr. Forste.

6. [sic] Based on the foregoing, the Court hereby concludes that the verdict in favor of Dr. Forste and Southern Indiana Orthopedics, Inc. and against Susan T. Greathouse is against the weight of the evidence.

Appellant's App. at 115-16. This appeal ensued.

DISCUSSION AND DECISION

"A trial court has wide discretion to correct errors and to grant new trials." DeVittorio v. Werker Bros., 634 N.E.2d 528, 530 (Ind. Ct. App. 1994) (citing Malacina v. Malacina, 616 N.E.2d 1061, 1062 (Ind. Ct. App. 1993)). When a trial court grants a new trial pursuant to Trial Rule 59(J), the granting of relief is given a strong presumption of correctness. Id. (citing Lucero v. Lutheran Univ. Ass'n, 621 N.E.2d 660, 662 (Ind. Ct. App. 1993)). We will reverse the grant of a new trial only for an abuse of discretion. Id. This court neither weighs the evidence nor judges the credibility of the witnesses. Precision Screen Machs., Inc. v. Hixson, 711 N.E.2d 68, 70 (Ind. Ct. App. 1999). An abuse of discretion will be found when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences which may be drawn therefrom. DeVittorio, 634 N.E.2d at 530. An abuse of discretion also results from a trial court's decision that is without reason or is based upon impermissible reasons or considerations. Id.

Dr. Forste and Southern Indiana Orthopedics, Inc. (hereinafter "Forste") first assert that the trial court's order is not reviewable because of the court's "failure to enunciate all supporting and opposing evidence relative to the contested issues." Appellant's Brief at 1 (emphasis original). Trial Rule 59(J) provides in relevant part:

The court, if it determines that prejudicial or harmful error has been committed, shall take such action as will cure the error, including without limitation the following with respect to all or some of the parties and all or some of the errors:

(1) Grant a new trial;

* * *

(7) In reviewing the evidence, the court shall grant a new trial if it determines that the verdict of a non-advisory jury is against the weight of the evidence

If corrective relief is granted, the court shall specify the general reasons therefor. When a new trial is granted because the verdict, findings or judgment do not accord with the evidence, the court shall make special findings of fact upon each material issue or element of the claim or defense upon which a new trial is granted. Such finding shall indicate whether the decision is against the weight of the evidence or whether it is clearly erroneous as contrary to or not supported by the evidence; if the decision is found to be against the weight of the evidence, the findings shall relate the supporting and opposing evidence to each issue upon which a new trial is granted; if the decision is found to be clearly erroneous as contrary to or not supported by the evidence, the findings shall show why judgment was not entered upon the evidence.

Ind. Trial Rule 59(J). Thus, in order to grant a new trial on a motion to correct error, the trial court must first determine that “prejudicial or harmful error has been committed” and that the court’s corrective action will cure the error. DeVittorio, 634 N.E.2d at 531. The court must then state its reasons for granting a new trial by making special findings. Id.

The procedural requirements enumerated in Trial Rule 59(J) and the process of making the requisite special findings have been characterized as “arduous and time-consuming.” Id. (citing State v. McKenzie, 576 N.E.2d 1258, 1260 (Ind. Ct. App. 1991), trans. denied). However, the purpose of those requirements is to provide the parties and the reviewing court with the theory of the trial court’s decision. Id. (citing

Malacina, 616 N.E.2d at 1063). The findings may summarize the evidence provided that the summary is complete enough to facilitate appellate review. Id. (citing Malacina, 616 N.E.2d at 1063). See also Chafin v. Grayson, 761 N.E.2d 474, 477 (Ind. Ct. App. 2002), trans. denied.

Here, the trial court's findings are sufficient to facilitate appellate review. The court gave a detailed history of the events between Greathouse and Forste and a thorough discussion of each expert witness's testimony. Further, the court described each expert's testimony with reference to Forste's compliance with the appropriate standard of care, as well as the causal relationship between Forste's conduct and Greathouse's damages. And the court's special findings were sufficient to demonstrate the theory for its decision, that the jury's verdict was against the weight of the evidence. Thus, Forste's criticism of the court's order for the trial court's order for not discussing "all" supporting and opposing evidence is not persuasive, and the court's order is reviewable. See id. See also Bossard v. McCue, 425 N.E.2d 682, 685-86 (Ind. Ct. App. 1981) (holding that "the crucial evidence was the experts' opinions of the care and treatment rendered by [the defendant doctor]. These were adequately summarized by the trial court. The findings of the trial court are therefore sufficient to comply with [modern Trial Rule 59(J)(7)]."), trans. denied.

Forste attempts to distinguish Bossard and instead rely on Nissen Trampoline Co. v. Terre Haute First National Bank, 365 Ind. 457, 358 N.E.2d 974 (1977), are likewise unpersuasive. Forste distinguishes Bossard by simply noting that the trial court in that case stated that one of the expert witnesses did a "good job." But while the trial court in Bossard did make that statement with respect to one of the expert witness, we also noted

that “[t]he court . . . summarized the testimony of the other expert witnesses.” Bossard, 425 N.E.2d at 685. Similarly, here, the trial court summarized the testimony of all of the expert witnesses and “obviously determined that the evidence in the case was conflicting.” See id. And in Nissen, the trial court’s order granting a new trial simply recited undisputed evidence and then, regarding the disputed issue of whether a product was a “defective product dangerous to a user without warning and instruction,” baldly stated that “[t]he greater weight of the evidence, by expert testimony . . . is that supervision and instruction should accompany the use of such equipment by beginners.” Nissen, 358 N.E.2d at 976. The trial court’s findings here, however, are markedly more thorough and complete than those at issue in Nissen.

Forste next argues that the trial court abused its discretion in granting a new trial. However, that argument is not well-supported. Forste’s emphasis on supposed conflicts in the evidence is misplaced: “The court may grant a new trial if the evidence conflicts, so long as [the evidence] preponderates in favor of the losing party.” Dughaish v. Cobb, 729 N.E.2d 159, 169 (Ind. Ct. App. 2000) (citing Ingersoll-Rand Corp. v. Scott, 557 N.E.2d 679, 683 (Ind. Ct. App. 1990), trans. denied). And Forste’s emphasis that the evidence weighs in his favor is a request that this court reweigh the evidence, which we will not do. See Hixson, 711 N.E.2d at 70. Again, the trial court gave a detailed history of Forste’s treatment of Greathouse and a thorough analysis of each expert witness’s testimony. Each expert testified that Forste caused, to some extent, Greathouse’s damages, and all but one expert agreed that Forste violated the appropriate standard of care.

Further, Forste asserts that the trial court erred in relying on information contained in a published study, as the “‘published study’ was never admitted into evidence at trial.” Appellants’ Brief at 19 (emphasis removed). However, Greathouse’s trial counsel did question Dr. Bell about the specific information contained in that study during his cross-examination, as Dr. Bell had relied on that study in forming his opinions. Although Dr. Bell repeatedly stated that he did not remember that information, Dr. Bell never stated that the information was incorrectly described by Greathouse’s counsel. And trial counsel for Forste presented no objection to the information or the questioning. Thus, it was within the purview of the jury and the trial court to assess Dr. Bell’s testimony and the allegations of Greathouse’s trial counsel. We will not review such assessments on appeal and therefore hold that the trial court did not improperly consider the information. See, e.g., Hixson, 711 N.E.2d at 70. In light of the facts before it, we hold that the trial court did not abuse its discretion in granting a new trial.

Affirmed.

RILEY, J., and BARNES, J., concur.